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ATTORNEYS FOR DEBTOR SUPERIOR AIR PARTS, INC.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:	§	
	§	Case No. 08-36705
	§	
SUPERIOR AIR PARTS, INC.,	§	Chapter 11
	§	
Debtor.	§	
	§	

**DEBTOR'S OBJECTION TO MOTION OF MALONEY, BEAN, HORN &
HULL, P.C. FOR PROTECTION AND/OR TO ESTABLISH ESCROW ACCOUNT**
[Docket No. 311]

TO: THE HONORABLE BARBARA J. HOUSER,
UNITED STATES BANKRUPTCY JUDGE:

Superior Air Parts, Inc. ("Superior" or "Debtor") files this Objection to Motion of Maloney, Bean, Horn, & Hull, P.C for Protection and/or to Establish Escrow Account [Docket No. 311] and respectfully states as follows:

I.
BACKGROUND

1. On July 17, 2009, Maloney, Bean, Horn & Hull, P.C. ("MBHH") filed its Objection To Superior Air Parts, Inc.'s Second Amended Disclosure Statement and,

Alternatively, Motion for Protection and/or to Establish Escrow Account ("Motion"). This document was filed and docketed as both an objection to the Debtor's Second Amended Disclosure Statement [Docket No. 310] and as an affirmative motion for relief [Docket No. 311]. At the hearing on the Debtor's Second Amended Disclosure Statement, MBHH withdrew its objection, but stated in open court that it was maintaining its Motion. Hearing has been set by the Court for September 1, 2009 at 3:30 p.m.

2. In the Motion, MBHH states that it has been Debtor's product liability counsel for a number of years and is the current counsel of record in 8 pending state-court lawsuits, which were stayed by the bankruptcy filing. Under the applicable insurance policies, the Debtor is responsible for paying the deductible obligation, which can include costs of settlement and defense costs.

3. Of the eight pending lawsuits identified in the Motion, six of the plaintiffs have entered into agreed orders with the Debtor to lift the automatic stay to allow the lawsuit to proceed, provided that the plaintiffs would only seek recovery against the insurance policy. In exchange, each plaintiff voluntarily waived any and all claims against the estate.

4. According to MBHH, it is being harmed because it must maintain the lawsuits "to protect Superior in litigation," which includes retaining local counsel, but is forced to proceed with the uncertainty as to whether it will be paid for the Debtor's portion of the defense costs. MBHH is uncertain as to what to do and asked the Court to require the Debtor to put \$175,000 into an escrow account for the anticipated legal fees required to continue forward in their case through the end of September 2009, the

anticipated effective date of the Joint Plan of Reorganization filed by the Debtor and the Committee.

5. The Debtor objects to the affirmative relief requested by MBHH.

II. ARGUMENT

6. Maloney Bean does not have standing to raise this issue and is not being harmed. The fundamental problem with MBHH's position is that it is not being harmed, and therefore, has no standing. MMBH is really representing the insurers at this point because the plaintiffs have waived their claims against the estate. The risk of loss is only upon the insurers, not MMBH or the Debtor. The Debtor does not have to proceed in the lawsuits. The only liability for the six waived claims is the insurer's liability above the Debtor's deductibles. The Debtor does not have to pay for that. The maximum liability for the Debtor in the two remaining cases is for the deductible if the policies are assumed, which is a claim in the bankruptcy.

7. MMBH falsely raises the concern that there is risk to the Debtor if the insurers decline coverage based upon the Debtor's failure to pay. That risk is actually being borne by the plaintiffs when they waived their claims. MMBH also asserts that it is required to "take action to protect Superior in the ongoing litigation without any agreement from any party that MBHH will be paid." See Motion, para. 12. To the contrary, no further action is required by the Debtor in these cases.

8. MBHH simply has a pre-petition claim against the Debtor for unreimbursed defense costs. If the proposed purchaser under Debtor's Joint Plan, Brantly, assumes the insurance policies at confirmation, it will have to make the insurers whole or reach a

compromise, and maybe MMBH can be paid through the insurers. However, that is not a debt or risk of the Debtor to MBHH.

9. Maloney Bean has not been approved by the Court as professionals for the estate. MMBH has previously been advised by Debtor's bankruptcy counsel that they have no authority to represent the Debtor or retain professionals on behalf of the Debtor. Neither can MMBH look to payment of the Debtor without being approved as counsel by the Court. There is no retention agreement entered into between the Debtor and MBHH during this bankruptcy. Therefore, the relief requested in the Motion is improper and in violation of the Bankruptcy Code.

10. The estate is not harmed by not defending product liability lawsuits where the plaintiffs have waived their claims against the estate. Ultimately, MBHH has failed to explain how the Debtor is harmed by not defending claims where the plaintiff has waived all claims against the Debtor other than from proceeds of insurance. If the insurers not to protect themselves by exercising their option under the policy endorsement to fund the defense costs, and then look to the Debtor for reimbursement, they are putting themselves at risk. It is not a responsibility of the Debtor. If the insurers think that Superior's non-payment provides a defense to coverage, then they can choose not to defend, allow the plaintiffs to take default judgments and then deny coverage. The plaintiffs are at risk in that situation, which is a risk the plaintiffs willingly took when they waived claims against Superior and agreed to only look to insurance.

11. The Debtor has filed a Joint Plan with the Committee that will reimburse the insurers if the plan is confirmed, so the insurers will not be harmed. It is in the insurers' best interest to support the plan because, if no plan is confirmed in this case,

then the insurers will have an unsecured claim against the estate for those fees along with all of the other creditors.

12. The Debtor is prohibited from paying pre-petition claims against the estate. Finally, any claims for payment of professional fees under pre-petition policies are pre-petition claims and the Debtor is prohibited from paying them prior to confirmation of any plan. It is uncertain whether the Motion is seeking reimbursement of per-petition fees as part of the “escrow” deposit requested. If that is the case, the Debtor is prevented from paying them.

WHEREFORE, the Debtor prays that the court deny Maloney, Bean, Horn & Hull, P.C.’s Motion for Protection in its entirety and grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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**Bankruptcy Attorneys for Debtor Superior
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was served upon the parties on the attached service list via First Class U.S. Mail, postage prepaid August 20, 2009.

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